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**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

In re:

PHILIP JAMES LAYFIELD,

Debtor.

) Case No. 2:18-bk-15829-NB

)

) Chapter 7

)

) Hon. Neil W. Bason

)

) **WELLGEN STANDARD,**

) **LLC'S OBEJCTION TO ALLEGED**

) **DEBTOR'S MOTION TO**

) **TRANSFER VENUE TO THE**

) **BANKRUPTCY COURT FOR THE**

) **DISTRICT OF DELAWARE**

DATE: December 6, 2018

TIME: 10:00 A.M.

CTRM: 1545

255 E. Temple Street

Los Angeles, California 90012

1 TO THE HONORABLE NEIL W. BASON, UNITED STATES  
2 BANKRUPTCY COURT JUDGE, THE OFFICE OF THE UNITED STATES  
3 TRUSTEE, THE DEBTOR AND PARTIES IN INTEREST:

4 Wellgen Standard, LLC ("Wellgen"), successor in interest to Advocate Capital,  
5 Inc. ("Advocate"), hereby objects to the Motion to Transfer Venue to the Bankruptcy  
6 Court for the District of Delaware (the "Motion to Transfer Venue") filed by the alleged  
7 debtor, Mr. Philip Layfield ("Mr. Layfield").  
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**I. PROCEDURAL BACKGROUND**

On May 21, 2018, Wellgen, Alliance Legal Solutions, LLC (“Alliance”), and Richard M. Pachulski, Chapter 11 Trustee of Layfield & Barrett, APC (the “L&B Trustee”) filed an involuntary petition (the “Involuntary Petition”) against the alleged debtor, Mr. Philip James Layfield (“Layfield”). On May 23, 2018, Wellgen moved for the appointment of an interim trustee pursuant to 11 U.S.C. § 303(g). (Docket No. 5.) On May 30, 2018, this Court granted Wellgen’s motion, and Mr. Wesley H. Avery was appointed the interim trustee (the “Interim Trustee”). (Docket Nos. 13 and 15.) Although an order for relief has not yet been entered, Mr. Layfield filed the Motion to Transfer Venue in the event that an order for relief is entered.

**II. ARGUMENT**

Mr. Layfield’s Motion to Transfer Venue asserts that venue is not proper in this Court under 11 U.S.C. § 1408(1). However, as Mr. Layfield knows full well, the Petitioning Creditors do not rely on, and have never asserted that venue is proper in this Court under, Section 1408(1). Instead, the Petitioning Creditors rely on, and the Involuntary Petition asserts that venue is proper in this Court under, 11 U.S.C. § 1408(2). Under Section 1408(2), “a case under Title 11 may be commenced in the district court for the district ... in which there is a case pending under title 11 concerning such person’s affiliate ....” Here, there is a case pending under title 11 concerning Mr. Layfield’s affiliate, Layfield & Barrett, APC (“L&B”). *In re Layfield & Barrett, APC*, Case No. 2:17-bk-19548-NB (the “L&B Case”). According to Mr. Layfield, he is the president and sole beneficial owner of L&B. (L&B Case, Docket No. 18, ¶ 1.) Thus, L&B is an affiliate of Mr. Barrett, *see* 11 U.S.C. § 101(2), and, therefore, venue is proper in this Court Section 1408(2).

1 Mr. Layfield also asks this Court to transfer venue to the Bankruptcy Court for  
2 the District of Delaware pursuant to 11 U.S.C. § 1412 and Rule 1014 of the Federal  
3 Rules of Bankruptcy Procedure, which permits the transfer of a case to another district  
4 if the Court determines that such transfer is in the interest of justice or the convenience  
5 of the parties. The court in *In re Lopez*, 2008 WL 7907340 (Bankr. S.D. Cal. 2008), set  
6 forth the standards to be applied in reviewing Mr. Layfield's Motion to Transfer Venue:

8 The analysis of the combination of "interest of justice"  
9 and "convenience of parties" under § 1412 and Rule 1014  
10 is fact specific to each case and necessarily requires the  
11 exercise of discretion based on the totality of the  
12 circumstances, which may include considerations  
13 regarding witnesses and the presentation of evidence.  
14 ***The party urging a change of venue has the burden of  
showing, by a preponderance of the evidence, that the  
transfer is warranted.*** The resolution of an issue of venue  
is left to the sound discretion of the trial court, but the  
power of the court to transfer venue should be exercised  
cautiously. *Id.*

15 Several non-exclusive factors, which generally amounts  
16 to a totality-of-circumstances analysis, are to be  
17 considered: (1) proximity of creditors to Court; (2)  
18 proximity of debtor to Court; (3) proximity of witnesses  
19 necessary to administration of the estate; (4) location of  
assets; (5) economic and efficient administration of the  
case; (6) need for further administration if liquidation  
ensues.

20 *Id.* at \*1-2. In addition to the factors identified in *Lopez*, factors, courts have  
21 considered, "a state's interest in having local controversies decided within its borders."  
22 *In re Standard Tank Cleaning Corp.*, 133 B.R. 562, 567 (Bankr. E.D.N.Y.1991); *see*  
23 *also In re Condor Exploration, LLC*, 249 B.R. 370, 378 (Bankr. D. Colo. 2003).

25 **1. Proximity of Creditors**

26 Mr. Layfield has not yet filed any schedules, and his Motion to Transfer Venue  
27 does not contain any discussion of any creditors other than the Petitioning Creditors.  
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1 The obvious reason for Mr. Layfield's omission is that the vast majority of Mr.  
2 Layfield's creditors are located in California. Indeed, at his recent deposition, Mr.  
3 Layfield could not identify a single creditor located in Delaware. (Transcript of  
4 Deposition of Philip Layfield, Docket No. 142 ("Layfield Dep.") at pp. 218, Line 19-  
5 219, Line 19.)

6 Mr. Layfield is the president and sole shareholder for L&B and the vast majority  
7 of Mr. Layfield's creditors arise from L&B's implosion including, but not limited to,  
8 Mr. Layfield's misappropriation of client funds. "Approximately 73 L&B clients ...  
9 submitted claims to the California State Bar indicating that they had not received their  
10 settlement funds from L&B. The State Bar estimates that the settlement amounts owed  
11 to the 73 former L&B clients total at least \$8.6 million." (See Affidavit of Mark E.  
12 Speidel ¶ 11(d), a copy of which is attached as Exhibit E to Request for Judicial Notice  
13 of Petitioning Creditor, Richard M. Pachulski, filed in this case (Docket No. 83). The  
14 California State Bar Court found that Mr. Layfield misappropriated client funds  
15 belonging to three (3) California residents totaling approximately \$3,400,000 in the  
16 aggregate. (See Decision and Order of Involuntary Inactive Enrollment entered by the  
17 California State Bar Court on May 18, 2018, a copy of which is attached as Exhibit A to  
18 Request for Judicial Notice of Petitioning Creditor, Richard M. Pachulski, filed in this  
19 case (Docket No. 83).  
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23 The fact that two (2) of the Petitioning Creditors are located outside California  
24 does not militate in favor of venue in Delaware. Mr. Layfield is, in effect, arguing that  
25 venue in Delaware would be more convenient for the Petitioning Creditors. The  
26 Petition Creditors are in a better position to judge what is convenient to them rather than  
27 Mr. Layfield. This factor weighs heavily in favor of venue remaining in this Court.  
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1                   **2.     Proximity of Debtor**

2                   Mr. Layfield did not relocate to Delaware until after the Involuntary Petition  
3                   was filed and he was released on bail. Under the terms of his bail, Mr. Layfield is  
4                   permitted to travel to California with the approval of pretrial serves. (Layfield Dep. at  
5                   p. 224, Lines 21-25.) Mr. Layfield's criminal trial is scheduled for February 26, 2019.  
6                   Mr. Layfield may not be a resident of Delaware much longer. Even if under these  
7                   circumstances the proximity of the debtor weighed in favor of venue in Delaware, this  
8                   factor is entitled to no more weight than any other factor. *Lopez*, 2008 WL 7907340 at  
9                   \*2.  
10                  

11                   **3.     Location of Assets**

12                  According to Mr. Layfield's Motion to Transfer Venue, his assets, to the extent  
13                  he has any assets other than potential litigation claims, are located in Delaware. At his  
14                  recent deposition, Mr. Layfield testified that he has no assets in Delaware other than an  
15                  account at M&T Bank with a balance of a few hundred dollars and that there are no  
16                  financial records in Delaware other than bank statements for the M&T account and  
17                  copies of his 2016 and 2017 tax returns. (Layfield Dep. at. pp. 193, Line 15-194, Line  
18                  17 and 206, Lines 6-14). To the extent Mr. Layfield has any litigation claims, those  
19                  claims are property of Mr. Layfield's bankruptcy estate and may be prosecuted in this  
20                  Court. Since Mr. Layfield was a resident of California before L&B imploded and he  
21                  fled to Costa Rica, discovery and recovery of assets is much more likely in California  
22                  than Delaware. Mr. Layfield did not move to Delaware until after the Involuntary  
23                  Petition was filed and he was released on bail. This factor weighs heavily in favor of  
24                  venue remaining in this Court.  
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1                   **4. Proximity of Witnesses Necessary to Administration of Estate**

2                   Mr. Layfield identifies not a single witness, other than himself, that is located in  
3                   Delaware. On the other hand, as Mr. Layfield notes, he resided in California until June  
4                   2017 when he fled to Costa Rica. Witnesses regarding Mr. Layfield's assets and the  
5                   disposition of those assets prior to his flight to Costa Rica are most likely in California  
6                   and not Delaware. The vast majority of creditors filing actions under 11 U.S.C. §§ 524  
7                   and 527, like the 73 former clients of L&B whose funds Mr. Layfield misappropriated,  
8                   and potential witnesses in those actions, are almost all located in California. This  
9                   factor weighs heavily in favor of venue remaining in this Court.  
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11                   **5. Economic and Efficient Administration of the Estate**

12                  Mr. Layfield makes the conclusory statement that this case can be most  
13                  efficiently managed by the Bankruptcy Court in Delaware because "any appraiser,  
14                  property manager, examiner or trustee will need to operate primarily in Delaware."  
15                  Mr. Layfield's assertion is absurd. First, Mr. Layfield failed to identify a single asset in  
16                  Delaware that would need to be managed or appraised. Second, the litigation claims  
17                  that Mr. Layfield has identified so far arise from L&B's implosion and other events and  
18                  transactions that occurred in California and are in effect malicious prosecution claims.  
19                  Mr. Layfield has not yet prevailed in his criminal case, and, therefore, any malicious  
20                  prosecution claim is entirely speculative. Third, as discussed above, the vast majority  
21                  of Mr. Layfield's creditors are located in California, and, therefore, objection to claims  
22                  and nondischargeability actions can be more efficiently managed in California. Fourth,  
23                  Mr. Layfield lived in California until June 2017, when he fled to Costa Rica. The  
24                  investigation and recovery of any assets disposed of by Mr. Layfield can be more  
25                  efficiently managed in California. Fifth, the L&B Case is pending in this Court, and it  
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1 will be much more efficient for this case and the L&B Case to proceed in the same  
2 court. Finally, this Court is entirely familiar with L&B's implosion and many of the  
3 issues related thereto, an interim trustee has already been appointed and the interim  
4 trustee has engaged both counsel and a financial advisor. This factor weighs heavily in  
5 favor of venue remaining in this Court.

6 **6. Need for Further Administration if Liquidation Ensues**

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8 Mr. Layfield argues, if a liquidation is necessary, his assets are located in  
9 Delaware. This is already a liquidation. Moreover, as discussed above, Mr. Layfield  
10 has not identified a single asset located in Delaware. This factor weighs heavily in  
11 favor of venue remaining in this Court.

12 **7. California's Interest**

13 California has an interest in resolving this matter in California. As discussed  
14 above, approximately 73 L&B clients submitted claims to the California State Bar  
15 because Mr. Layfield misappropriated their settlement funds. All these 73 clients have  
16 claims and potential actions against Mr. Layfield under Section 524. California has an  
17 interest in ensuring that these claims are resolved in California and that these 73 clients  
18 are not inconvenienced any more than they already have been and certainly not for the  
19 convenience of Mr. Layfield. This factor weighs heavily in favor of venue remaining in  
20 this Court.  
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23 **III. CONCLUSION**

24 At his recent deposition, Mr. Layfield admitted that the only reason for  
25 transferring this case to Delaware is that he now claims to be a resident of Delaware and  
26 does not wish to travel to California. (Layfield Dep. at p. 225, Lines 1-5.) Mr.  
27 Layfield's convenience is not a sufficient basis to transfer this case to Delaware.  
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1 Thus, Wellgen prays that this Court deny Mr. Layfield's Motion to Transfer  
2 Venue and grant such further relief as it deems just and proper.

3 Dated: December 3, 2018

WEILAND GOLDEN GOODRICH LLP

4  
5 By: /S/ JEFFREY GOLDEN  
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6 Attorneys for Wellgen Standard,  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**650 Town Center Drive, Suite 600, Costa Mesa, California 92626**

A true and correct copy of the foregoing document entitled (*specify*): **WELLGEN STANDARD, LLC'S OBJECTION TO ALLEGED DEBTOR'S MOTION TO TRANSFER VENUE TO THE BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **December 4, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **December 4, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **December 4, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Neil Bason, 255 E. Temple Street, Los Angeles, CA 90012

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



December 4, 2018

Kelly Adele

Date

Printed Name

Signature

**VIA EMAIL**

Philip J. Layfield  
c/o Maximum Legal Holdings, LLC  
8 The Green, Suite 6426  
Dover, DE 19901  
Email: phil@maximum.global

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